

Commodity Credit Corporation, USDA

§ 1424.6

31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 of each FY, as applicable.

Sign-up period means the time period announced by CCC during which CCC will accept program agreements.

USDA means the United States Department of Agriculture.

§ 1424.4 General eligibility rules.

(a) An applicant must be determined eligible by KCCO and be assigned an agreement number.

(b) To be eligible for program payments, a producer must maintain records indicating for all relevant FY's and FY quarters:

(1) The use of eligible commodities in bioenergy production;

(2) The quantity of bioenergy produced from an eligible commodity by location;

(3) The quantity of eligible commodity used by location to produce the bioenergy referred to in paragraph (b)(2) of this section; and

(4) All other records, needed, or required by the agreement to establish program eligibility and compliance.

(c) A producer must allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a producer being determined not eligible.

(d) For producers not purchasing raw commodity inputs, the production must equal or exceed that amount of production that would be calculated using the raw commodity inputs and the conversion factor set out in § 1424.3. A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction both soy oil purchases and biodiesel production for the applicable quarter. Any special conversion factors needed will be the province of CCC and CCC alone and CCC's decision will be final.

(e) A producer must meet all other conditions set out in these regulations, in the agreement, or in other program documents.

§ 1424.5 Agreement process.

(a) To participate, an eligible producer must submit a signed agreement during the FY sign-up period. Agree-

ments may be for single or multiple FY's. However, multiple FY agreements require producers to submit annual production estimate reports during each applicable FY sign-up period. Such reports must comply with the terms of the agreement and this part. In all cases, the accounting for compliance will be made on a per FY basis.

(b) Sign-up each FY will be held for 30 calendar days beginning for:

(1) FY 2003 on the date of publication of this rule;

(2) FY 2004 and beyond on August 1 of the FY before the applicable FY.

(c) After agreements are submitted:

(1) If determined eligible by KCCO, an agreement number will be assigned, and a notification will be mailed to the producer;

(2) If additional information is needed for KCCO to determine eligibility, the producer will be contacted as soon as practicable and requested to provide additional supporting documentation;

(3) If determined ineligible by KCCO, producers will be notified in writing that their agreement was rejected and the reason for the determination.

§ 1424.6 Payment application process.

(a) To apply for payments under this program during an FY, an eligible producer must:

(1) Submit an application or eligibility report for each quarter. Submit the last quarterly application or report of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(2) Certify with respect to the accuracy and truthfulness of the information provided;

(3) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with program provisions; and

(4) Provide documentation as requested by CCC of both the producer's net purchases of eligible commodities and net production of bioenergy compared to such production at all locations during the relevant periods. CCC may adjust the formulaic payments otherwise payable to the producer if there is a difference between the amount actually used and certified and

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the amount of increased commodity use calculated under the formula.

(b) After applications or reports are submitted, eligible producers:

(1) Shall submit such additional supporting documentation as requested by KCCO when additional information is needed to determine eligibility;

(2) Will be notified in writing of their ineligibility and reason for the determination, when the application is determined ineligible by KCCO; and

(3) Shall promptly refund payments when a refund to CCC is due. If a refund is not made promptly, CCC may establish a claim.

§ 1424.7 Gross payable units.

(a) For ethanol, producers will be eligible for payments on gross payable units for only their ethanol production from eligible inputs that exceeds, for the program year to date, their total comparable production at all locations as compared to the comparable portion of the previous year. Producers of ethanol are not eligible for base production payments. Producers shall not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund. For example, if at the end of the first quarter, a producer were to be paid for an increase of 500 gallons of ethanol, but at the end of the second quarter, that producer's year-to-date production was down to a net increase for the year of 450 gallons, then a refund would be due for the loss of the corresponding 50 gallons of net extra production. Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, the extra ethanol production from eligible inputs will be converted to gross payable units by dividing the gallons of increased ethanol by the applicable conversion factor.

(b) Biodiesel producers will be eligible for payments on gross payable units for all biodiesel production from eligible inputs. For eligibility purposes there will be two kinds of payment: additional production payments (APP), and base production payments (BPP). Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, gross payable units

for biodiesel production from eligible inputs will be calculated as follows:

(1) For APP, by dividing the gallons of increased biodiesel by the biodiesel conversion factor of 1.4. APP payments will be made on increases as compared with the previous FY. Producers will not be paid twice for the same production. Failure to maintain year to date biodiesel production increases between quarters will require a comparable APP refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for 500 gallons of increased biodiesel production, but by the end of the second quarter that producer's production, for the year to date, was only 450 gallons, then a refund of the APP premium would be due for the loss of the corresponding 50 gallons of net production increase.

(2) For BPP, which will be made on production not eligible for the APP, by dividing the base production by the biodiesel conversion factor of 1.4 and multiplying the result by 0.5 in FY 2003, 0.3 in FY 2004, 0.15 in FY 2005, or 0.0 (zero) in FY 2006 to determine base biodiesel production gross payable units.

(3) Adding the APP and BPP to determine biodiesel gross payable units.

(c) There shall only be one eligible producer per plant location.

(1) When producers move production from one plant to another between FY's, the prior FY's production for the producer for program payment calculations tied to increases in production shall be the greater of:

(i) The production at the plant operated by the producer in the prior FY, or

(ii) The production in the prior FY at the plant being taken over by the producer in the current FY.

(2) New producers who are taking over a plant with prior bioenergy production shall assume that production history for program purposes. For example: in FY 2002, Producer A produced 1,000 gallons of bioenergy in plant 1 and Producer B produced 500,000 of bioenergy in plant 2. In FY 2003, Producer A assumes operation of plant 2; Producer B moves to plant 3, which was not in the program in FY 2002, but with FY 2002 production of 400,000 gallons